

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEBORAH K. MURPHY-DAVIDSON, an
individual,

Plaintiff/Counter-Defendant,

v.

File No. 1:14-CV-779

KENNETH J. STOLL, an individual,
and COMFORCARE SENIOR SERVICES
MID MICHIGAN, a limited liability
company,

Defendants/Counter-Plaintiffs.

Motion Hearing

Before

THE HONORABLE RAY KENT
United States Magistrate Judge
October 25, 2016

APPEARANCES

FREDERICK J. BONCHER
SUSAN KNOLL
601 Three Mile Rd., NW
Grand Rapids, MI 49544
Attorney for Plaintiff/
Counter-Defendant

THOMAS A. GINSTER
203 S. Lafayette
P.O. Box 206
Greenville, MI 48838
Attorney for Defendants/
Counter-Plaintiffs

Digital audio recording transcribed by:

Kevin W. Gaugier, CSR-3065
U.S. District Court Reporter

Grand Rapids, Michigan

October 25, 2016

1:03 p.m.

- - -

P R O C E E D I N G S

THE COURT: Good afternoon. This is case 14-CR-779, Murphy-Davidson v. Stoll, et al. Mr. Boncher and Ms. Knoll appear on behalf of Ms. Murphy-Davidson and Mr. Ginster on behalf of defendants Stoll and ComForcare.

Mr. Ginster, a lawyer -- I'm sure you know this, but a lawyer named Liisa Speaker filed an appearance this week. What will her role in the case be if you --

MR. GINSTER: She's ComForcare and Mr. Stoll's appellate counsel, Your Honor.

THE COURT: All right. Thank you.

All right. We're here this afternoon on a number of motions, including defendants' motion to set aside the judgment. I guess it's really a motion for -- defendants' motion for judgment as a matter of law, new trial, or remittitur. We're also here on plaintiff's motion for new trial on the issue of damages on the assault and battery claim, and Mr. Boncher, for new trial on the -- it wasn't cast this way or captioned this way, but you're also asking for a

1 new trial on the --

2 MR. BONCHER: Damages for stalking.

3 THE COURT: Well, they found against you on
4 stalking, didn't they?

5 MR. BONCHER: Yes, they did.

6 THE COURT: So are you asking for --

7 MR. BONCHER: I guess --

8 THE COURT: -- a new trial on the stalking claim?

9 MR. BONCHER: Well, we actually thought that that
10 was against the great weight of the evidence. We have a
11 motion for, yeah, for new trial on the stalking, I guess.

12 THE COURT: I can't -- I can't -- if it was limited
13 to the -- if you had a trial on damages, there would be no
14 trial because there's no liability.

15 MR. BONCHER: That's true.

16 THE COURT: The jury found --

17 MR. BONCHER: Yeah, that would be a whole new trial
18 or a judgment -- basically a judgment as a matter of law on
19 stalking notwithstanding the verdict of no stalking. But I
20 understand it's a little confusing, Your Honor. I guess
21 primarily we want a new trial just on the issue of damages for
22 the assault and battery, and I guess I can waive the stalking
23 issue at this point, make it easier for the Court.

24 THE COURT: Well, I'm just asking what the intent
25 was because you asked for --

1 MR. BONCHER: I think we want a new trial on
2 stalking because we think the decision was against the great
3 weight of the evidence.

4 THE COURT: Okay.

5 MR. BONCHER: We want a new trial on damages alone
6 for assault and battery because that was undisputed damages.

7 THE COURT: And that's what I thought you were
8 asking for, so --

9 MR. BONCHER: Yeah, yeah.

10 THE COURT: All right. Then we also have
11 plaintiff's request for sanctions, plaintiff's motion for a
12 bill of costs. I have reviewed the parties' filings, and
13 those would include the following items. Did I say
14 remittitur? I think I did, Mr. Ginster.

15 MR. GINSTER: You did, Your Honor.

16 THE COURT: Okay. I've reviewed -- read and
17 reviewed the parties' filings, and those would include ECF 95,
18 which is defendants' motion for new trial or remittitur or
19 judgment as a matter of law, some 12 pages in length, 18 pages
20 of attachments, and 347 pages of exhibits.

21 Plaintiff's response to that motion, ECF 101, and
22 her attached brief in support of the response and in support
23 of her counter-motion for a partial new trial on damages for
24 assault and battery and stalking and for sanctions. That is
25 ECF 102, 20 pages in length, 78 pages of attachments.

1 ECF 103, plaintiff's motion for new trial for
2 damages only for assault and battery and stalking and
3 sanctions, which is supported by ECF 102, the brief, which
4 kind of is apparently intended as a dual-purpose brief both in
5 opposition to defendants' motion and in support of plaintiff's
6 motion.

7 I've reviewed ECF 106, defendants' response to
8 plaintiff's motion for new trial and for sanctions, 18 pages;
9 ECF 112, plaintiff's reply to defendants' response to
10 plaintiff's motion for sanctions, eight pages plus 14 pages of
11 attachments; ECF 115, plaintiff's proposed brief in reply to
12 defendants' brief in opposition to plaintiff's motion for a
13 new trial, ten pages, 55 pages of attachments; ECF 116,
14 supplement to plaintiff's reply brief regarding motion for new
15 trial or damages, three pages, 37 pages of attachments.

16 On the bill of costs I reviewed the bill itself, ECF
17 97, two pages, 18 pages of attachments; ECF 98, plaintiff's
18 brief in support of bill of costs, seven pages with 46 pages
19 of attachments; and ECF 100, defendants' motion to disallow a
20 portion of the claimed costs. The motion itself is two pages,
21 supporting memorandum is six, and there are ten pages of
22 attachments.

23 Is there anything else that I haven't mentioned that
24 the parties think that I should have received and reviewed
25 before the hearing here today, Mr. Boncher?

1 MR. BONCHER: I don't believe so, Your Honor.

2 THE COURT: Mr. Ginster?

3 MR. GINSTER: Your Honor, I just tendered to counsel
4 and brought extra copies of the Restatement I should have
5 attached. This is the Restatement of Torts Second pertaining
6 to intentional infliction.

7 THE COURT: Okay. All right.

8 MR. GINSTER: Give these to Mr. Dion?

9 THE COURT: You may. You may. And these should
10 have been attached to which brief, the -- that would be --

11 MR. GINSTER: Our initial motion for a new trial,
12 Your Honor, or -- I'm sorry, yeah.

13 THE COURT: So ECF 95?

14 MR. GINSTER: That's correct, Your Honor.

15 THE COURT: All right. As I say, I've reviewed all
16 of the filings which I just identified. I don't feel the need
17 for oral argument. I'm prepared to announce my decision now.

18 As Judge Cohn recently observed in a case in the
19 Eastern District, the case being MSC Software Corporation v.
20 Altair Engineering, Inc. -- Jim, do we have an F.3d cite for
21 this or just the Westlaw cite? I'll give you the West -- it's
22 2014 Westlaw 6485492, signed November 13, 2014.

23 "Under Federal Rule of Civil Procedure 59(a), a
24 court may grant a motion for new trial 'for any of the reasons
25 for which new trials have heretofore been granted in actions

1 at law in the courts of the United States.' This rule has
2 been construed as encompassing such grounds as a verdict
3 against the clear weight of the evidence, an inconsistent
4 verdict, an excessive award of damages, an error of law during
5 the trial, or prejudicial misconduct by the court, opposing
6 counsel, or a juror that deprived the moving party of a fair
7 trial." Judge Cohn goes on to note that: "It is clear that a
8 court has broad discretion to decide whether to grant a new
9 trial."

10 It is my finding based upon the evidence admitted at
11 trial and the parties' extensive filings in this case which we
12 have just inventoried that the jury's verdict in this case was
13 inconsistent, and I say that for the following reason. The
14 jury found for plaintiff on the intentional infliction of
15 emotional distress count. The only conduct which would have
16 provided a basis for the jury's verdict on that count is the
17 very same conduct that supported plaintiff's claim on the
18 stalking count and plaintiff's claim on the assault and
19 battery count, and yet on the stalking count the jury found
20 for the defendants. On the assault and battery count the jury
21 found that an assault and battery had occurred, but concluded
22 that it was not the proximate cause of any injury to the
23 plaintiff.

24 There is no way that the jury's verdicts on Counts 1
25 and 2 can be reconciled with its verdict on Count 3, and for

1 that reason I am granting the motion, defendants' motion for
2 new trial, ECF 95, on the issue of intentional infliction of
3 emotional distress. I am also granting defendants' (sic)
4 motion, ECF 103, for new trial on both the stalking claim and
5 also the assault and battery claim.

6 So it looks like we're going to tee this up and do
7 it again. I have a date somewhere here. April -- our
8 tentative new trial date will be April the 10th, 2017.

9 MR. BONCHER: Your Honor, I know that I'm going to
10 be out of the country at that time.

11 THE COURT: Okay. Do you know how long you'll be
12 gone?

13 MR. BONCHER: Yeah. I'm gone through the 16th of
14 April, I think, two weeks down in Mexico.

15 THE COURT: Okay. My backup date was April 24. Any
16 problem with that?

17 MR. BONCHER: I don't think so.

18 THE COURT: You know, if something comes up,
19 obviously I will be understanding.

20 Mr. Ginster, does the 24th work for you?

21 MR. GINSTER: I believe so, Your Honor.

22 THE COURT: Okay. All right. So I will issue a
23 judgment accordingly. Any questions, comments, concerns, Mr.
24 Boncher?

25 MR. BONCHER: I don't believe so, Your Honor, no.

1 THE COURT: All right. Mr. Ginster, anything from
2 you, sir?

3 MR. GINSTER: No, Your Honor.

4 THE COURT: Okay. All right. We'll be adjourned.
5 Thank you.

6 (Proceedings concluded at 1:15 p.m.)

7 * * *

8 CERTIFICATE OF REPORTER

9
10 I, Kevin W. Gaugier, Official Court Reporter for the
11 United States District Court for the Western District of
12 Michigan, appointed pursuant to the provisions of Title 28,
13 United States Code, Section 753, do hereby certify that the
14 foregoing is a true and correct transcript of the proceedings
15 had in the within-entitled and numbered cause on the date
16 hereinbefore set forth.

17 I do further certify that the foregoing transcript
18 was prepared by me.

19
20
21
22 /s/ Kevin W. Gaugier

23 Kevin W. Gaugier, CSR-3065
24 U.S. District Court Reporter
25 110 Michigan N.W.
622 Federal Building
Grand Rapids, MI 49503